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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Fred Graves, Isaac Popoca, on their own ) No. CV-77-00479-PHX-NVW  
10 behalf and on behalf of a class of all )  
11 pretrial detainees in the Maricopa County )  
12 Jails, )  
13 Plaintiffs, )  
14 vs. )  
15 Joseph Arpaio, Sheriff of Maricopa )  
16 County; Fulton Brock, Don Stapley, )  
17 Andrew Kunasek, Max W. Wilson, and )  
18 Mary Rose Wilcox, Maricopa County )  
Supervisors; )  
Defendants. )

ORDER

19 Before the Court is the question of whether the Court has jurisdiction to decide  
20 Defendant Arpaio's Motion to Terminate (Doc. 1912) while his appeal is pending in the  
21 Court of Appeals. (Docs. 1909, 1910.)

22 **I. Background**

23 This class action was brought in 1977 against the Maricopa County Sheriff and  
24 the Maricopa County Board of Supervisors, alleging that the civil rights of pretrial  
25 detainees held in the Maricopa County, Arizona, jail system had been violated. In March  
26 1981, the parties entered into a consent decree that addressed and regulated aspects of  
27 County jail operations as they applied to pretrial detainees. In 1995, the 1981 consent  
28 decree was superseded by an Amended Judgment entered by stipulation of the parties.

1       On October 22, 2008, Defendants' Renewed Motion to Terminate the Amended  
 2 Judgment pursuant to the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626 and  
 3 42 U.S.C. § 1997e, was granted in part and denied in part, and the provisions of the  
 4 Amended Judgment remaining in effect were restated in the Second Amended Judgment  
 5 entered the same day. (Docs. 1634, 1635.) The Second Amended Judgment consists of  
 6 those provisions of the Amended Judgment for which the Court found "prospective relief  
 7 remains necessary to correct a current and ongoing violation of the Federal right, extends  
 8 no further than necessary to correct the violation of the Federal right," "is narrowly  
 9 drawn," and is "the least intrusive means to correct the violation." *See* 18  
 10 U.S.C. § 3626(b)(3).

11       On November 21, 2008, Defendant Arpaio sought appellate review of the Second  
 12 Amended Judgment. On October 13, 2010, the Ninth Circuit affirmed the Second  
 13 Amended Judgment. On October 28, 2010, Defendant Arpaio filed the pending Motion  
 14 to Terminate paragraphs 2-5 and 9-16 of the Second Amended Judgment. (Doc. 1912 at 4  
 15 n.4.) On November 2, 2010, Defendant Arpaio filed a petition for rehearing en banc in  
 16 the Ninth Circuit.

## 17 II. Analysis

### 18       A. **The PLRA Does Not Vest the District Court with Jurisdiction to 19           Terminate Prospective Relief During the Pendency of an Appeal.**

20       Defendant Arpaio cites no authority holding that the PLRA permits the district  
 21 court to exercise its authority to modify existing prospective relief while the judgment  
 22 granting prospective relief is on appeal, and the Court has found none.

23       Any order for prospective relief regarding prison conditions is "terminable upon  
 24 the motion of any party or intervenor . . . 1 year after the date the court has entered an  
 25 order denying termination of prospective relief" under the PLRA. 18 U.S.C.  
 26 § 3626(b)(1). The PLRA further provides:

27       Prospective relief shall not terminate if the court makes written findings  
 28 based upon the record that prospective relief remains necessary to correct a  
 current and ongoing violation of the Federal right, extends no further than  
 necessary to correct the violation of the Federal right, and that the

1 prospective relief is narrowly drawn and the least intrusive means to correct  
 2 the violation.

3 18 U.S.C. § 3626(b)(3). To determine whether to terminate prospective relief, the district  
 4 court must “take evidence on the current circumstances” regarding those remedies with  
 5 which Plaintiffs do not concede that Defendants are in compliance. *Gilmore v.*  
 6 *California*, 220 F.3d 987, 1010 (9th Cir. 2000). If prospective relief remains necessary to  
 7 correct a current and ongoing violation, the district court’s authority to modify the  
 8 existing prospective relief includes authority to expand or diminish the existing relief.  
 9 See *Pierce v. Orange County*, 526 F.3d 1190, 1204 n.13 (9<sup>th</sup> Cir. 2008). But the statute  
 10 does not authorize taking evidence on current circumstances and determining whether  
 11 prospective relief remains necessary to correct a current and ongoing violation, while an  
 12 appeal from the prospective relief is pending.

13 Moreover, § 3626(b)(4) does not authorize modification or termination of relief  
 14 pending appeal. It provides: “Nothing in this section shall prevent any party or  
 15 intervener from seeking modification or termination before the relief is terminable under  
 16 paragraph (1) or (2), to the extent that modification or termination would otherwise be  
 17 legally permissible.” Here, assuming the motion has substantive merit, relief would be  
 18 terminable under paragraph (1), but not otherwise legally permissible.

19 **B. Rule 62(c) Does Not Vest the District Court with Jurisdiction to  
 20 Terminate Prospective Relief During the Pendency of an Appeal.**

21 With certain exceptions not present here, see Fed. R. App. P. 4(a)(4), the filing of a  
 22 notice of appeal “confers jurisdiction on the court of appeals and divests the district court  
 23 of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident*  
 24 *Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *Natural Res. Def. Council v. Sw.*  
 25 *Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). Fed. R. Civ. P. 62(c) provides the  
 26 district court limited jurisdiction to modify an injunction while an appeal is pending:

27 While an appeal is pending from an interlocutory order or final judgment  
 28 that grants, dissolves, or denies an injunction, the court may suspend,  
 29 modify, restore, or grant an injunction on terms for bond or other terms that  
 30 secure the opposing party’s rights.

1 However, a district court possesses jurisdiction to modify the injunction while an appeal  
2 is pending only to preserve the status quo:

3 [Rule 62(c)] grants the district court no broader power than it has always  
4 inherently possessed to preserve the status quo during the pendency of an  
5 appeal; it does not restore jurisdiction to the district court to adjudicate  
anew the merits of the case. Thus, any action taken pursuant to Rule 62(c)  
may not materially alter the status of the case on appeal.

6 *Natural Res. Def. Council*, 242 F.3d at 1166 (internal quotation marks and citations  
7 omitted).

8 Defendant Arpaio contends that his motion to terminate the Second Amended  
9 Judgment will not require a new adjudication of the case's merits because he already is in  
10 compliance with the Second Amended Judgment and need only report his compliance to  
11 the Court. As noted above, the PLRA requires the Court to "take evidence on the current  
12 circumstances" regarding those remedies with which Plaintiffs do not concede that  
13 Defendants are in compliance, and Plaintiffs do not concede that Defendants are in full  
14 compliance with the Second Amended Judgment.

15 Defendant Arpaio summarily contends that granting or denying his motion to  
16 terminate would not materially alter the status of the case on appeal. But his brief argues  
17 the converse, *i.e.*, the case on appeal will not affect the determination of his motion to  
18 terminate. In fact, he states:

19 If the Court of Appeals agrees with Defendant Arpaio, the decision will  
20 have no effect because Defendant Arpaio already performed and continues  
21 to perform the prospective relief this Court ordered. . . . If the Appeal is  
granted, the only issue affected is attorneys' fees.

22 (Doc. 1909 at 7.) But Defendant Arpaio does not address whether termination of the  
23 Second Amended Judgment would affect the appeal taken from the Second Amended  
24 Judgment.

25 Defendant Arpaio currently is required to comply with the Second Amended  
26 Judgment. Terminating the Second Amended Judgment would relieve Defendant Arpaio  
27 from compliance obligations. Although he states that he "continues to perform the  
28 prospective relief this Court ordered," he does not promise to continue to do so even if the

1 Second Amended Judgment were terminated. Thus, terminating the Second Amended  
2 Judgment would not maintain the status quo.

3 IT IS THEREFORE ORDERED that Defendant Arpaio's Motion to Terminate  
4 (Doc. 1912) is denied for lack of jurisdiction without prejudice to refiling it after the  
5 Court of Appeals' mandate issues and jurisdiction is revested in this Court.

6 DATED this 16<sup>th</sup> day of November, 2010.

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8 Neil V. Wake  
9 United States District Judge

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